IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-02-2002

CORAM

THE HONOURABLE MR.JUSTICE A.PACKIARAJ

Crl.R.C.No.1336 of 1998 and Crl.M.P.No.10234 of 1998

1. M/s.Jayalakshmi Weaving Works
rep. by its Managing Partner
A.Damodaram
Chirakkal, Kannur, Kerala State

2. A Damodaran .. Petitioners.

Versus

M.Sivasamy .. Respondent.

! For Petitioners: Mr.P.Mani

PRAYER in Crl.R.C.No.1336 of 1998: Revision against the order dated 2 .11.98 passed in Crl.M.P.No.7751 of 1998 in C.A.No.9 of 1994 on the file of the First Additional Sessions Judge and Chief Judicial Magistrate, Salem.

: O R D E R

This revision has been filed by the petitioner herein against the order passed by the First Additional Sessions Judge cum Chief Judicial Magistrate, Salem in Crl.M.P.No.7751 of 1998 in C.A.No.9 of 1994 against their conviction for an offence under Section 138 of the Negotiable Instruments Act.

2. At the outset, I may state that the judgment of the trial Court has not been filed in this revision and hence, this Court is not able to appreciate the contentions of the rival parties and the discussions made by the trial Judge, while finding the accused guilty. However for the purpose of disposing of this revision, the learned counsel for the petitioners restricts himself only to the orders passed by the First Additional Sessions Judge in Crl.M.P.No.7751 of 1998 filed by the complainant/respondent under Section 391 Cr.P.C, praying for a permission to adduce additional evidence.

3. The facts of the prosecution as revealed in the complaint indicates that the first accused is a firm doing business of manufacturing High Class Handloom piece goods and the second accused is the Managing Partner of the firm Jeyalakshmi Weaving Works at Chirakkal, Cannanore. The complainant herein is a Yarn Merchant doing business in yarns and clothes of which the accused is a customer and had purchased clothes on several occasions totalling to rupees two lakhs and odd. The last date of the supply of the goods, according to the petitioners/ accused was on 4.12.87, for which the accused is said to have issued a cheque for Rs.50,000/- dated 28.4.1991. When the said cheque was presented in the bank, the same was dishonoured on the ground of insufficiency of funds and consequently proceedings under Section 138 of the Negotiable Instruments Act was initiated against the accused.

4. The petitioners/accused herein took the plea that the goods were supplied to them on 4.12.87, while the cheque was dated 28.4.1991 and consequently, the cheque having been issued after three years, it does not come under the category of "legally enforceable debt" as contemplated under the explanation under Section 138 of the Negotiable Instruments Act as it is time barred. But however, it appears that the learned Magistrate has not accepted his plea and has convicted the petitioners. It is again at the Appellate stage, the same stand had been taken by the petitioners herein and consequently according to the petitioners, they cannot be convicted for an offence under Section 13 8 of the Negotiable Instruments Act. It is at this juncture that the respondent/complainant herein had filed an application under Section 391 Cr.P.C before the Appellate Court, stating that actually the total debt of the accused amounts to Rs.2,61,848/- and as a part payment, the petitioners/accused had given two cheques for Rs.50,000/- dated 30.10.90, which is within three years from the last date of supply of the goods and consequently, the accused has acknowledged the existing debt and hence the period of limitation would start only from 30.10 .90. As a matter of fact the complainant would also place on record that those cheques also have been dishonoured and a prosecution under Section 138 was initiated against the accused in C.C.No.57 of 1991 and therefore the complainant (respondent herein) wanted to adduce evidence in relation to the issuance of those cheques, which indicates the acknowledgment of the debt as on 30.10.90 within a period of three years and consequently, the present prosecution comes within the explanation in Section 138 of the Negotiable Instruments Acts "legally enforceable debt".

5. A counter was filed by the accused herein stating that the petition has been filed belatedly and the witnesses have been cross examined at length even during the course of trial before the Magistrate; that the respondent/complainant herein had not let in any evidence to this effect and consequently petition under Section 391 Cr.P.C has to be dismissed. However, the learned Sessions Judge after going through the records had allowed the petition. It is against this order the present revision has been filed.

6. Though notice has been sought to be served on the respondent/ complainant, notice was not served and the matter had been periodically adjourned. Hence I am constrained to go through the records, hear the petitioner and pass orders.

On a perusal of the records, I find that two cheques have in fact been issued by the accused on 30.10.90 and according to the complainant those cheques are said to be as part payment of this existing liability or debt and consequently he had wanted to adduce evidence relating to the same. It is the further contention of the learned counsel that these cheques were already in existence and that they were the subject matter of another case and consequently those records have not been brought on record in this case at the relevant time. Since I feel that those cheques are not created for the purpose of this case and they were already existing at the time when the prosecution was launched in relation to this case and the accused has till date not disputed about the factum of issuing such cheques in favour of the complainant, I do not feel any illegality committed by the learned Sessions Judge in allowing the petition filed by the respondent herein. Therefore, in such circumstances, I hold that this Court cannot say that the prosecution is being allowed to fill in the lacunae. But it is only in the interest of justice and in order to arrive at a just decision, this Court finds it necessary that an opportunity should be given to the respondent to adduce additional evidence and also permit the accused to cross examine the complainant. However, it is open for the accused to take any defence to discredit the version of the prosecution and the Court is directed to decide on the evidence without being influenced by any observations made by this Court. In the result, this revision is dismissed with the direction that the appeal should be disposed of as early as possible. Consequently, connected Crl.M.P is closed.

15-02-2002

Index:Yes/No
csh

To

1. The Judicial Magistrate V
Salem.

2. -Do- Thro The Chief Judicial
Magistrate, Salem.

3. The Principal District Sessions
Sessions Judge, Salem.

A.PACKIARAJ,J.

Pre-Delivery Order in
Crl.R.C.Nos.1336 of 1998

15-02-2002